IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

1. S.B. Criminal Appeal No.512/2006

Saleem S/o Yaseen
...Accused-appellant
Versus
The State of Rajasthan through P.P.
...Respondent

2. S.B. Criminal Appeal No.1465/2002

Hakmuddin S/o Islam, Jecum S/o Ibbar and
Naeem S/o Haneef
...Accused-appellant
Versus
The State of Rajasthan through P.P.
...Respondent

3. S.B. Criminal Appeal No.1570/2002

Fakru @ Tahir S/o Gaffur
...Accused-appellant
Versus
State of Rajasthan through P.P.
...Respondent

Date of Judgment :::: 13th February, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Presence in Criminal Appeals No.512/06 and 1465/02

Shri N.A. Naqvi, Counsel for accused-appellants
Shri Arun Sharma, P.P., for the State

Presence in Criminal Appeal No.1570/2002

Shri Azad Ahmed, Counsel for accused-appellant Fakru @ Tahir
Shri Arun Sharma, P.P., for the State

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By the Court:-

These three appeals arise out of common judgment and order, therefore, the same are being disposed of by this common judgment.

The Additional District & Sessions Judge (Fast Track) Kama, vide its judgment and order dated 17.10.2002, in Sessions Case No.51/2002, convicted and sentenced five accused-appellants, namely, Saleem, Hakmuddin, Jacum, Naeem and Fakru @ Tahir under Section 399, IPC, to ten years rigorous imprisonment and a fine of Rs.1000/-, each; in default of payment of fine to further undergo six months simple imprisonment. And, under Section 3/25 of the Arms Act to two years rigorous imprisonment and a fine of Rs.1000/- each; in default of payment of fine, to further undergo six months simple imprisonment.

Accused Saleem has preferred S.B. Criminal Appeal No.512/2006; accused Hakmuddin, Jacum and Naeem have preferred joint appeal being S.B. Criminal Appeal No.1465/2002; and, accused Fakru @ Tahir has preferred S.B. Criminal Appeal No.1570/2002.

Shri N.A. Naqvi, the learned counsel for accused-appellants Saleem, Hakmuddin, Jacum and

Naeem, and Shri Azad Ahmed, the learned counsel for accused-appellant Fakru @ Tahir, argued the appeals at length. They referred the statements of the prosecution witnesses and documentary evidence of the prosecution as well. But, during the course of arguments, in view of the statement of PW-1 Ram Dayal (PW-1), Harish Chand (PW-2), both the members of police party, PW-5 Shivram Singh, who was the main witness of the prosecution, and PW-9 Prem Bahadur, did not press the appeals on merits.

So far as merits of the case are concerned, it is not necessary to discuss the facts of the case as the order of conviction has not been challenged by the learned counsel for the appellants and rightly so.

I have examined the statements of the prosecution witnesses including the statements of PW-1 Ram Dayal, PW-2 Harish Chand, PW-5 Shivram Singh and PW-9 Prem Bahadur, and also the finding of the learned trial court, and after considering the same I am satisfied that the learned trial court has rightly convicted the accused-appellants under Section 399, IPC, and under Section 3/25 of the Arms Act, and learned counsel for accused-appellants are right in not pressing the appeal of the accused-appellants on merits.

So far as reduction of sentence of imprisonment is concerned, the learned counsel for appellants contended that accused Hakmuddin and Saleem have already remained in jail for about five years and ten-and-half month; accused Jacum and Fakru @ Tahir for about three years and eight months, therefore, their sentence of imprisonment may be reduced to a period of imprisonment already undergone by them.

So far as accused Naeem is concenred, it is contended that he also remained in jail for about two years and one months but he was released on bail by another court without considering the conviction in the present case and thereafter he did not surrender himself, therefore, at present he is absconding.

The learned Public Prosecutor supported the judgment of the trial court and contended that the sentence awarded by the trial court is reasonable and be maintained as it it.

I have considered the submissions of the learned counsel for both the parties.

So far as sentence of imprisonment awarded by the trial court is concerned, it is relevant to mention that all the accused-persons have already served out two years sentence of imprisonment

awarded by the trial court under Section 3/25 of the Arms Act, but so far as the sentence of imprisonment awarded under Section 399, IPC, is concerned, this Section provides that whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. The ten years imprisonment is the maximum imprisonment and no minimum sentence of imprisonment and fine is provided in it.

The learned counsel for the appellants has referred the decision in the case of State of Rajasthan Vs. Chhuttan and Others – Cr.L.R. (Raj.) 1988 Page 336, wherein trial court, while convicting accused-persons therein under Sections 399 and 402, IPC, gave the benefit of the provisions of Section 4 of the Probation of Offenders Act, 1958. The order of the trial court was challenged before this Court and this Court dismissed the appeal of the State and maintained the order of the trial court granting benefit of probation to the accused-persons in respect of conviction under Sections 399 and 402, IPC.

The learned counsel for the appellants has also referred the decision in the case of Abdul Hamid & Others Vs. State of U.P.- AIR 1980 SC 1631,

wherein the Hon'ble Apex Court reduced the sentence of imprisonment of accused therein to a period of imprisonment already undergone by them under Section 399 and 402, IPC. The law point was not discussed, therefore, the judgment was not reported, hence the period of imprisonment already undergone is not known in the above case reported in AIR 1980 SC 1631.

After considering all the facts and circumstances of the present case and the submissions of learned counsel for both the parties, I am not inclined to reduce the sentence of imprisonment to a period of imprisonment already undergone by appellants but I think it fit and proper to accept the contention of the learned counsel for the accused-appellants in part and, in my view, the ends of justice will meet in case the sentence of imprisonment of each accused-appellants under Section 399, IPC, is reduced to a period of six years rigorous imprisonment and a fine of Rs.1000/-; in default of payment of fine to further undergo, one month's simple imprisonment.

Consequently, the appeals of the appellants are partly allowed. Their conviction under Section 399, IPC, and conviction and sentence under Section 3/25 of the Arms Act is upheld. So far as sentence

of imprisonment to each accused-appellants under Section 399, IPC, is concerned, the same is reduced to a period of six years rigorous imprisonment and a fine of Rs.1000/-, in default of payment of fine to further undergo one month's simple imprisonment.

The accused-appellants Hakmuddin, Jacum and Saleem are in jail. So far as accused Fakru @ Tahir is concerned, although his sentence of imprisonment was suspended by this Court vide order dated 4.1.2007, but his counsel Shri Azad Ahmed submits that he has not furnished bail-bonds, therefore, he has not been released so far and he is still in jail. In case he has furnished the bail bonds and released on bail then he is directed to surrender himself before the trial court and the trial court will ensure that he has served out the remaining sentence of imprisonment.

So far as accused Naeem is concerned, it is contended that he is absconding, therefore, the trial court is directed to issue standing non-bailable warrant against him for securing his presence and will send him in Jail to serve out the remaining sentence. The trial court may also summon and direct the S.H.O. of concerned Police Station to find out his present correct address. The trial court may proceed further in the matter in accordance with law.

(Narendra Kumar Jain) J.

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